

SUPERIOR COURT OF CALIFORNIA

County of San Diego

DATE: August 22, 2005 DEPT. 71 REPORTER A: Peter Stewart CSR# 3184
PRESENT HON. RONALD S. PRAGER REPORTER B: CSR#
JUDGE

CLERK: K. Sandoval

BAILIFF: REPORTER'S ADDRESS: P.O. BOX 120128
SAN DIEGO, CA 92112-4104

JUDICIAL COUNSEL
COORDINATION PROCEEDINGS
NO. JCCP 4221
1,11,111, AND 1V

TITLE [Rule 1550(b)]
NATURAL GAS CASES

INDEXING
WILLIAMS AND RELIANT GENERAL DEMURRER

Defendants Williams and Reliant Energy Services, Inc.'s general demurrer to Plaintiffs' individual complaints and the Class Master Complaint is OVERRULED. Defendants' request for alternative relief in their motion to strike is DENIED.

Defendants demur to Plaintiffs' complaints on the grounds that the claims for unjust enrichment under Business and Professions Code section 17200 are improper because Defendants did not receive a benefit directly from Plaintiffs and there is no such cause of action for unjust enrichment.

The Court overrules the demurrer as the complaints state sufficient facts to constitute the claims asserted therein. Further, it is a factual determination whether the Defendants have been unjustly enriched by Plaintiffs. And there is no prohibition on relief for unjust enrichment because the benefit was not directly conferred by the plaintiffs. (*County of Solano v. Vallejo Redevelopment Agency* (1999) 75 Cal.App.4th 1262, 1278, citing *California Federal Bank v. Matreyek* (1992) 8 Cal. App. 4th 125, 132)

Defendants rely heavily on *Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134 in support of their position that the benefit must have been paid directly to the defendant from the plaintiff. However, *Korea Supply Co.* is critically distinguishable to the facts of this case.

The *Korea Supply Co.* court stated “[t]he object of restitution is to restore the status quo by returning to the plaintiff funds in which he or she has an ownership interest.” (*Korea Supply Co.*, *supra* at 1148-50) In *Korea Supply Co.*, the plaintiff sought to recover profits from defendant that defendant received from a non-party. In this case, Plaintiffs paid money for their energy needs. The complaints allege that Defendants manipulated the gas market to inflate prices paid by consumers of natural gas. Consequently, this case is different than *Korea Supply Co.* because these plaintiffs have an “interest” in the profits received by Defendants. Plaintiffs may have paid for their energy by payment to their utility provider, but whether that money is objectively traceable back to Defendants is a question of fact. Even the Supreme Court recognized if the tables were turned, and the Republic of Korea sued Lockheed Martin for its wrongful conduct in securing the contract – restitution would have been appropriate. (*Korea Supply C.*, *supra* at 1151, [If Lockheed Martin were forced to disgorge its profits to KSC, there might be little left for the Republic of Korea to recover, even though it is the party ostensibly entitled to restitutionary relief].)

Here, Plaintiffs were the parties that lost money as a result of the alleged conduct of Defendants, unlike *Korea Supply Co.* where the plaintiff requested restitution of monies never paid by plaintiff – but instead were paid by the Republic of Korea - a non-party to the action. Further, suing as a class prevents the concerns expressed in *Korea Supply Co.* concerning unlimited multiple suits and risks of duplicative liability.

For the same reasons as detailed above, the Court overrules Defendants’ demurrer on the grounds that constructive trust is an inappropriate remedy.